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In re Application of MYERS et al.	:	
Application No.: 09/673,133	:	DECISION
PCT No.: PCT/CA99/00307	:	
Int. Filing: 12 April 1999	:	
Priority Date: 14 April 1998	:	
Attorney Docket No.: 1038-1102 MIS	:	
For: TRANSFERRIN RECEPTOR GENES OF	:	
MORAXELLA	:	

This is a decision on applicant's communication filed in the United States Patent and Trademark Office (USPTO) on 10 October 2002, requesting acceptance of the declarations under 37 CFR 1.497.

### **BACKGROUND**

On 30 April 2001, applicant, in response to 31 October 2000 Notification of Missing Requirements, filed a petition in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4). The petition requested the acceptance of the application without the signature of inventor, Run-Pan Du on the grounds that the non-signing inventor refused to execute the declaration.

On 07 September 2001, a decision on petition was mailed to applicant dismissing the petition on the grounds that applicant had not provided (1) factual proof that the non-signing inventor refused to execute the application and (2) an acceptable declaration signed by the 37 CFR 1.47(a) applicants on behalf of the non-signing inventor.

On 03 January 2002, applicants filed a renewed petition under 37 CFR 1.47(a) along with a declaration executed by all the inventors, including Run-Pan Du. The renewed petition under 37 CFR 1.47(a) was considered moot as a declaration executed by all the inventors was submitted. However, the declaration did not meet the requirements of 37 CFR 1.497.

On 11 June 2002, applicants filed a third renewed petition including two declarations signed by the inventors. The two complete declarations, submitted on 11 June 2002, identified each inventor and stated the citizenship, residency and mailing address of each inventor. However, it was apparent, based on the signature pages, that the declarations were not newly

executed declarations but rather were formed from the previously submitted defective declaration. In a decision mailed on 10 September 2002, applicants were asked to provide an explanation as to whether the two separate declarations were generated from the single previously filed defective declaration (in which case, a newly executed oath/declaration would be required) or whether the two declarations were in fact true copies of complete declarations actually executed by the inventors.

### **DISCUSSION**

Initially, it is noted that applicant failed to expressly provide the clarification required in the 10 September 2002 decision. Specifically, applicant states only that the two Declarations are "two copies of complete Declarations actually executed by the inventors" rather than "true" copies as required in that decision.

Moreover, upon further review of the declarations filed 11 June 2002, additional defects have been noted.

First, the poor quality of the copy of the declarations renders the presence of the signatures of inventor Loosmore unascertainable.

Second, the two declarations filed 11 June 2002 cannot be true copies of complete declarations actually executed by the inventors. This is because the last page of both declarations bears identical copies of inventor Klein's signature. From the original declarations filed 03 January 2002, Klein's signature is dated 13 November 2001. In view of the fact that some of the inventors executed the declarations prior to this date, it necessarily follows that at least one of the declarations was piecemealed together utilizing Klein's signature page for the other declaration.

### **CONCLUSION**

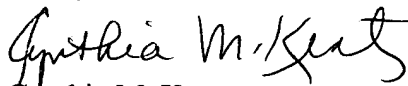
For the above reasons, the request to accept the declarations under 37 CFR 1.497 is **DISMISSED WITHOUT PREJUDICE**.

A new oath or declaration in compliance with 37 CFR §1.497 must be filed within TWO (2) MONTHS from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT Legal, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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